case before the learned Magistrate on the 9th of July, 1940, disclose an error in law in that the learned Magistrate sought to impose an unlawful requirement on the accused as a condition precedent to giving his consent to a composition of the alleged offence. In view of the proceedings in this case subsequent to those of the 9th of July and certain attempts which have been made to influence me by bringing quite irrelevant matters to my notice, I have had no easy task in deciding on the proper order to be made in the exercise of my revisionary powers. Upon one point at any rate it would seem that everyone is agreed, and that is that the learned Magistrate was fully justified in requiring the accused to apologise to the complainant in open Court as a condition precedent to giving his consent to a composition.

I am therefore setting aside the order of transfer, and remitting this case to the learned Magistrate with a direction that he give the accused another chance of making a complete and satisfactory apology to the complainant in his Court. Should the accused then offer what any reasonable man would describe as an adequate and satisfactory apology, the learned Magistrate should, in my opinion, consent to the composition because the one lawful condition precedent which he imposed will have been performed. Should no such complete and satisfactory apology be forthcoming, then there appears to be no way out but another order of transfer.

Whatever may be the eventual outcome I do venture to express a hope that the heat which this case appears to have engendered in certain quarters not often affected in that way will soon be dissipated.

Order of transfer set aside.

[APPELLATE ORIGINAL JURISDICTION]

TERRELL, Ag. C.J.

July 16, 1940.

SENG SAI KEE v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 57 of 1940]

Criminal Procedure Code—S. 173—An instance of improper charges.

An accused was charged with putting one Tan Kim Teck in fear of injury and also with committing theft of 12 lemonade bottles.

Held, that the two offences charged were not of the same kind and not connected in any way and the conviction was quashed.

APPEAL.

Appellant in person.

C. H. Koh (Ag. D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—The appellant was charged

(1) with putting one Tan Kim Teck in fear of injury on the 25th May 1940, an offence punishable under section 385 of the Penal Code, and

(2) with committing theft of 12 lemonade bottles on the same day on certain premises owned by one Abdul Razak.

Under section 173 of the Criminal Procedure Code every charge shall be tried separately except in the cases mentioned in sections 174, 175, 176 and 179. The two offences charged were not of the same kind and were not connected in any way, and the trial of the two offences simultaneously constitutes an illegality which cannot be cured.

Crown Counsel was unable to support the convictions and the appeal was accordingly allowed and the appellant discharged. There appeared to be no ground for interfering with the convictions or the sentences on the merits, and it is unfortunate that, owing to a disregard of provisions of the Criminal Procedure Code with which all Magistrates should be familiar, a dangerous criminal has got off.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

August 27, 1940.

VELLAMA v. ENG & CO. & ANOTHER.

[SINGAPORE SUIT No. 154 of 1940]

Collision between motor vehicles—Res ipsa loquitur.

When an accident takes place between two motor vehicles upon the road and the accident is such as in the ordinary course of things does not happen if those who had the management of the vehicles had taken proper care and when the motor vehicles are shown to be under the management of the defendants or their servants, the fact of the accident itself affords reasonable evidence in the absence of explanation by the defendants that the accident arose from want of care. **Liffen v. Watson**[5] and **Halliwell v. Venables**[2] followed.

The plaintiff was a passenger in a motor bus which collided with a lorry. The plaintiff's arm was not inside the bus at the time and it appears that probably her arm was grasping or wrapped round one of the supports of the roof of the bus.

Held, that this did not amount to contributory negligence; and

Also held further, that the decisive cause of the accident was the driving of the two vehicles too close together as they passed each other and therefore even

if she had been negligent in allowing her arm to project slightly outside the vehicle that effect would not prevent her from recovering damages.

Cases referred to:—

(1) *Davies v. Mann,* (1842) 10 M. & W. 546.

(2) *Halliwell v. Venables,* 143 L.T.R. 215.

(3) *Hase v. The London General Omnibus Co.,* (1907) 23 T.L.R. 616.

(4) *Katijah binti Abdullah v. Leong Toh & Another,* (1940) M.L.J. 87.

(5) *Liffen v. Watson,* 161 L.T. at p. 351.

(6) *Scott v. London & St. Katherine Docks Co.,* (1865) 3 H. & C. 596.

(7) *Simon v. The London General Omnibus Co.,* (1907) 23 T.L.R. 463.

(8) *Wing v. The London General Omnibus Co.,* (1909) 2 K.B. 663.

HEARING.

V. J. Mendis for the plaintiff.

R. C. H. Lim for the defendants.

The facts and arguments sufficiently appear from the judgment.

Pedlow, J.—In a recent motor car case Stable, J. began his judgment with the following words:—

> "In my opinion, the—no doubt deservedly—high reputation enjoyed by the late King Solomon as a judge is very largely attributable to the fact that he sat before the internal combustion engine had been invented."

With that opinion I have considerable sympathy.

2. On the 3rd day of March this year the plaintiff was a passenger from Singapore to Seletar in bus No. S. 782 belonging to the second defendant. About the 8th mile on Thompson Road the bus met a lorry No. S. 853 belonging to the first defendant coming from Seletar. The two vehicles collided in the sense that some portions of the right hand sides of the bodies of both vehicles scraped each other as they passed. The plaintiff was injured through that collision. Her right arm had to be amputated the same day above the elbow. Those facts I hold have been proved.

3. The plaintiff has sued both defendants for damages. Both defendants are represented by the same Counsel the reason for this being, I am informed, that they are insured with the same insurance company.

4. At the close of the case for the plaintiff a submission was made to the Court that there was no case to be left to a jury if a jury existed and that the action should be dismissed on the ground that the plaintiff had not proved affirmatively negligence against either defendant. I did not accept that submission but held that the facts proved required the explanations of the persons driving the bus and the lorry.

5. It was urged on behalf of the defendants that the fact of the collision in itself was no proof of negligence on the part of either defendant. Reliance was made on certain *obiter dicta* of Fletcher Moulton, L.J. in *Wing v. The London General Omnibus Co.*[8]. It seems clear however on a study of decisions since then that the Courts have made up their minds that Lord Justice Fletcher Moulton's *dicta* went too far. They were given at a time when motor cars were in their infancy and when it was fairly easy for a judge, probably deciding a case on theoretical principles, to fall into errors such as a judge nowadays might fall into when called upon to decide cases in connection, say, with aeroplanes when perhaps he himself has never travelled in an aeroplane and certainly has never piloted one.

6. The latest case that I have found upon motor cars is the one decided by Stable, J. from which I have just quoted. It was decided on October the 6th last year and it is reported in the Law Times of December 2nd, 1939, Vol. 161 at page 351. The case is *Liffen v. Watson*[5]. The facts are of course not exactly parallel. It would almost appear as if there has been as yet no decided case which arose from such a collision by two motor vehicles as occurred in the present case. At any rate, neither learned counsel nor I have been able to find such a case. The general principles of law applicable, however, are discussed in *Liffen v. Watson*[5]. In the course of his judgment Stable, J. quotes from Erle, C.J. in *Scott v. London and St. Katherine Docks Company*[6] where that learned judge said that

> "when the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

He then proceeds to consider the *dicta* to which I have referred by Fletcher Moulton, L.J. and then he continues:—

> "However that may be, on a consideration of **Halliwell v. Venables**[2] and the other cases cited, I must apply the clear statement of principle laid down by the Court of Appeal in the last-named case."

The reference to *Halliwell v. Venables*[2] is 143 L.T.Rep. 215. It is also reported in (1913) K.B. Div. 253. Scrutton, L.J. said in that case that all that was

necessary to say, in his judgment, was that, given the facts before him, it appeared to him that they required explanation by the driver of the motor car.

7. In the present case there are undisputed facts which, in my opinion, call for explanations from the drivers of the two vehicles. The facts which are not in dispute are that the time was between half past three and four in the afternoon, it was not raining, the road was dry, there were no other vehicles on the road at the time, the metalled portion of the road was 22 feet wide and on one side of the road there was a grass verge of 6 feet and on the other side a grass verge of about 3 feet, and the accident took place at a right angled bend, as it is called.

8. Mr. Terrell, in his book, the Law of Running Down Cases, second edition, at page 34 suggests that a case such as ours is one where, although there is no decision to that effect at the moment, the view which the Courts will ultimately take is that should the injuries of the passenger be caused by a collision on the road evidence to the effect would establish a *prima facie* case of negligence. He submits "with some confidence" that there is no logical distinction between a case such as ours and other cases where it has been decided that the *prima facie* onus of proof in an action for negligence is discharged by the passenger proving that he was lawfully in the vehicle, that there was an accident and that he was injured thereby. In the present case I am not taking the law as far as Mr. Terrell suggests. I am following the principles laid down by the Court of Appeal in *Halliwell v. Venables*[2] and followed by Stable, J. in *Liffen v. Watson*[5].

9. I have now to consider whether the explanation given by the drivers of the two motor vehicles is one which I can accept. I have been informed by counsel for the defendants that the case of the two defendants is the same. They are both insured with the same insurance company and if one or other or both has or have to pay damages the loss will fall on the insurance company. This simplifies the case for me to a considerable extent. Now what are the stories of the two drivers? The lorry is approaching Singapore at 15 miles an hour and at the corner where the collision occurred it slows down to 10 miles per hour and is on its own side of the road. The bus is approaching from the opposite direction. Both drivers put the distance one can see round the corner at 25 feet. This from the photographs is a very great underestimate. However they say they did not see each other until they were only 25 feet away from each other. If one were to accept their story at its face value one would be forced to decide that that in itself would be great negligence. It would not be keeping a proper look-out. The lorry driver's story continues that as he approached the bus a passenger swung out his or her arm and that as he was afraid of hitting it he swerved slightly to the left, and that the tail of the lorry then scraped some portion of the bus on its right side. The bus driver's story was that he was coming at 15 miles an hour, that he slowed down to 10 miles at the corner that he did not know how the accident happened and that he thought he was going to pass the lorry in safety. According to his story the bus's left wheels were half a foot from the left-hand side of the road and the lorry driver states he was well over on his own side. I entirely reject the stories of both drivers. Not to put too fine a point on it, I think they are lying and I so find. In the first place, if the vehicles were in the positions on the road they say they were and on a road of this width then physical contact between the vehicles is highly improbable if not utterly impossible. The vehicles would be at least six or seven feet apart and I am not inclined to think that any Court would accept such a cock and bull story. Another point is that if both vehicles were going at ten miles an hour they could have stopped within a few feet and no collision would have been necessary. The next point made is that the driver of the lorry by turning his vehicle to the left swung his tail over in front of the bus. That again is not a physical possibility. If a vehicle is standing stationary and turns on its axis the tail is likely to swing over. But the lorry is travelling straight ahead and a slight turn to the left would not swing the tail of the lorry many feet over to the other side and, of course, to have collided the tail must have been sent over quite a number of feet, say 6 or 7 feet away. To provide the reason for the lorry's moving to the left we have this story of an arm flung out from the bus. I do not believe that story either. I think it is a pure invention and I find as a fact that no arm was put out of the bus in this way. Apart from the common sense of the whole matter, the driver of the lorry did himself no good by repeating again and again in a parrot-like manner without being asked by counsel, by volunteering over and over again in his evidence the statements that the cause of the accident was the throwing-out of the passenger's arm and that no accident would have happened if this arm had not been extended from the bus. I can come to no other conclusion than that the arm story is a pure invention. I was referred by counsel to the report made by the lorry driver at the Police Station as bearing out this arm story, but on reading the report I find that it does no such thing. Nowhere until coming into this Court is there any

suggestion—in the reports to the police at the time, or at the subsequent trial of the lorry driver—that the accident in any way was attributable to this alleged throwing-out of an arm. If it were necessary for me to determine the question of speed, which I do not think it is in this case, I should find it grossly under estimated. In particular I should hold that the bus was travelling the faster of the two vehicles and was turning the corner at too great a speed. The injury to the bus would seem to show that. It is the bus, the body of the bus, which would tend to swerve outwards from centrifugal force when turning the corner at too rapid a speed. Finally I say that the story of the two drivers cannot be accepted for a moment. Were it true the accident could not have happened and the accident did happen, and that is proof of its lack of veracity. I am entirely unable to accept their account. I cannot agree with their explanation and I find therefore that the plaintiff has established negligence on the part of both defendants. The burden is on them to disprove negligence. They have failed to do so.

10. That brings me to the defence of contributory negligence which has been pleaded. The plaintiff said that at the time of the accident her arm was inside the bus, I am unable to accept that statement as true, as the circumstantial evidence points to the fact that her right arm, the one injured, was outside the bus. From the medical description of her injuries it seems to me most probable—though it is not necessary for me to go into this point to decide the case—that her arm was wrapped round one of the supports of the roof of the bus. This is a very winding road and passengers sitting on seats arranged as in this bus would naturally feel a great tendency to lurch forward at some of the corners. It would be quite natural for a passenger to grasp or hold on to one of these supports with the idea of steadying himself in going round some of the sharper bends. That is obvious from ordinary common sense and a knowledge of this particular road. I can also speak from my own personal experience in that a few months ago I was a passenger with a number of people in a private bus seated as this bus is seated over this very road to Seletar. It happened to be after dark and it was impossible to see when one was coming to a corner and I remember well the trouble I had in keeping my proper seat in the bus when going round some of these corners. In spite of the plaintiff's evidence to the contrary and the evidence of her witnesses, I can come, from a common sense point of view, to no other conclusion than that her injured arm was outside the bus. The question then is, "Was that contributory negligence?" and if it was,

> "was it contributory negligence of such a kind as to prevent her from succeeding in her present claim?"

There is a recent case almost parallel to the present case which was decided by Laville, J. in Johore on the 3rd day of January this year. It is *Katijah binti Abdullah vs. Lee Leong Toh & another*,[4]. There a passenger in a bus had her arm similarly torn off by a passing lorry while admittedly the arm was resting projecting from the side of the bus. This is what Laville, J. says on the point:—

> "In my view sitting in the position adopted by the plaintiff in this suit is one that is **prima facie** a neutral act. Most buses are so built that the window sill provides a natural rest for the arm and invites its use as such and it is a fact of which I sitting as a jury take cognisance, that it is a common practice so to sit: in the face of a common practice and no statutory prohibition or actual warning against such an act I hold that it cannot be held as anything but reasonable, and in the circumstances does not show negligence. The plaintiff sitting in an ordinary manner in the bus proceeding properly on its own side of the road with no expectation of or reason to expect contact with another vehicle and no duty to keep a good look out cannot be held to have owed a duty to the driver of an oncoming vehicle not to sit in this manner."

That seems to me to be a reasonable statement of the law. I questioned the witnesses as to whether there was any prohibition in this bus from putting one's arm outside or any notice that it was forbidden or dangerous to put one's arm out of the bus. The answer was in the negative in each case. But if I am wrong in my view, that to sit as the plaintiff did does not constitute negligence, one must then consider whether if it was negligence it was of such a kind as to prevent the plaintiff from recovering. The leading case on this aspect of the law is I think *Davies v. Mann*[1]. That is a very old case of a donkey, langled and on the road, injured by a vehicle. After consideration of that and subsequent cases the law is put by Mr. Terrell at page 52 in two propositions which seem to me correctly to state the legal position. The first proposition is:

> "1. A general proposition, to this effect, that the plaintiff in an action for negligence cannot succeed if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care which contributed to the cause of the accident. But this rule must be qualified by an equally well established rule, namely—
>
> 2. Although the plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident, yet if the defendant could in the result, by the exercise of that ordinary care and diligence that would be exercised by a prudent person, have avoided the mischief which has happened, the negligence of the plaintiff will not excuse the defendant."

So that even if the plaintiff's arm were projecting slightly over the edge of the bus, and even if it were

held that that was negligence, it does not prevent her from recovering unless it was the decisive cause of the accident. I have no hesitation in holding that the decisive cause of the accident in this case was the driving of the two vehicles too close together as they passed each other and therefore, even if the plaintiff was negligent in allowing her arm to project slightly outside the vehicle, that fact would not, in my view, prevent her from recovering damages.

11. I have been referred to the case of *Simon v. The London General Omnibus Coy.*[7] in which the plaintiff whose arm was projecting over the brass rail of the bus failed to recover damages, but as I understand that case the ratio decidendi was not that the plaintiff was himself negligent but that it had not been proved that the bus driver was negligent. That case was followed by another, that of *Hase v. The London General Omnibus Coy.*[3] in which the plaintiff failed to secure damages and in that case the projection which caused the injuries was of such a construction that although the plaintiff was properly seated in his seat he was injured. So it is impossible to say that *Simon v. The London General Omnibus Coy.*[7] is an authority for the proposition that you would fail to secure damages if your arm is projecting over the side of the bus. The basis of the decision, as I have said, was something quite different.

12. I find then that the plaintiff has proved negligence against the two defendants and that she is entitled to recover damages against them. She has given particulars of her special damages. I take them item by item. I propose to award her as follows:—

Under "hospital charges" the amount claimed	$ 5.50
Under General Hospital	$ 0.20
Under Ricksha hire	$ 9.70
On the question of wages for the nurse I am prepared to accept her statement that she employed some one to assist her when she had recently lost her arm and asked someone to help her as she could not fend for herself. I think the sum of $50.00 would cover any reasonable expense under that head	$50.00
Extra nourishment—I think $20.00 is abundant	$20.00
Clothes spoiled—I suggest $10.00	$10.00
Loss of profits on business is difficult to calculate but I think the sum of $75.00 is sufficient under that head	$75.00

Then I come to the question of the loss of her arm and her pain and suffering in connection therewith. I agree with the learned counsel for the defence that the good lady under-estimated her age, but at the same time she is a healthy strong woman and should have many years of life before her. I know that in the case above referred to Laville, J. awarded $2,000.00 but that was to a young girl, an actress in a theatrical company or something of that sort. At any rate I think that that sum would be much too high in the present case, but that the sum of $750.00 would be a fair amount. I therefore award the plaintiff against the two defendants the sums that I have enumerated above (totalling in all $920.40) and the taxed costs of this action.

Judgment for the plaintiff.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

August 29, 1940.

FUAN AH POCK ALIAS PHOA AH HOK v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 75 of 1940]

Evidence Ordinance S. 115—Corroboration of child's evidence required.

The unsworn evidence of a child requires corroboration in a similar manner to the evidence of an accomplice. Although a Magistrate does not expressly state in his judgment that he has directed his mind to the consideration of this legal principle, still if he has in fact done so that is sufficient even though it is not specifically referred to in his ground of judgment.

The decision of the Johore Court of Appeal in **Lee Mion v. P. P. of Johore**[2] followed.

Cases referred to:—

(1) *Rex v. Koh Soon Poh*, 4 M.L.J. 120.

(2) *Lee Mion v. P. P. of Johore*, 3 M.L.J. 124.

(3) *White v. P. P. of Kedah*, Kedah Criminal Appeal No. 5 of 1359 (27th June, 1940) not yet reported.

APPEAL.

H. S. Cheah for the appellant.

C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This was an appeal by Fuan Ah Pock against his conviction by the Second Magistrate on a charge of theft. The evidence for the prosecution, anyway so far as the identification of the accused was concerned, rested on the evidence of Mun Chiok Hai, a boy 10 years of age.

It was argued on the appeal that there were so many improbabilities and inconsistencies in the case for